



D.A.R. #11
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Pau et al.

Serial No.: 09/449,854

Filed: November 26, 1999

For: PRODUCTION OF VACCINES

Examiner: Laurie A. Scheiner

Group Art Unit: 1648

Attorney Docket No.: 2183-4240US

NOTICE OF EXPRESS MAILING

Express Mail Mailing Label Number: EV092593996US
Date of Deposit with USPS: May 22, 2002
Person making Deposit: Jon Wentz

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MAY 28 2002

OFFICE OF PETITIONS

**PETITION FOR REVIVAL OF AN APPLICATION FOR
PATENT ABANDONED UNAVOIDABLY UNDER 37 C.F.R. § 1.316(b)**

Attn: Office of Petitions
Commissioner for Patents
Washington, D.C. 20231

Sir:

A Notice of Abandonment for failure to comply with the Sequence Rule requirements in Applicants' response to the Notice to Comply dated February 28, 2002 was issued in the above-referenced case on March 12, 2002. The Notice of Abandonment has been received and reviewed. Applicants submit that such failure to comply was unavoidable and respectfully request revival of the application.

In a communication dated February 15, 2002 entitled "Response to Notice to Comply", Applicants requested clarification of the requirement for a sequence listing for the above-referenced

application. A copy of the February 15, 2002 communication is attached hereto as Appendix A. As stated in the communication, after a review of the application, associated figures and subsequent filings, Applicants were unable to determine the nature of the sequence listing requested. The Notice to Comply, while indicating that a sequence listing in compliance with 37 C.F.R. § § 1.821-1.825 was required, failed to indicate the location in the application wherein a nucleotide or amino acid sequence coming within the requirements of 37 C.F.R. § § 1.821-1.825 could be found. A copy of the Notice to Comply is attached hereto as Appendix B. Without awareness of the nature of the nucleotide or amino acid sequence for which a listing was requested, Applicants could do little more than request clarification, as was timely done.

Had the Examiner so chosen, Applicants or their attorney could have been contacted with the appropriate clarification and an appropriate response to the Notice to Comply timely filed avoiding abandonment of the application. Rather, the application proceeded to abandonment without Applicants being given the requested clarification and a chance to comply. As such, the unavoidable delay was in no way caused by Applicants or their attorney.

Therefore, as demonstrated above, the above-referenced application was unavoidably abandoned. In the Notice of Abandonment, the sequence for which a sequence listing was deemed required was pointed out to Applicant. Accordingly, submitted herewith is a paper copy of the Sequence Listing which complies with 37 C.F.R. § § 1.821-1.825, a copy of the Sequence Listing in computer readable format (CRF) and appropriate Statement. Also included herewith is a response to the Notice to Comply accompanied by the appropriate request for extension of time for response and associated fee.

Should the Examiner have any further questions or comments regarding this matter, the Applicants' attorney may be contacted at the telephone number or address provided herein.

A check has been enclosed for the Petition to Revive fee. If the amount of the check is insufficient, please debit Deposit Account No. 20-1469 for the remainder of the fee. If the amount is in excess of that required, please credit that deposit account.

Respectfully Submitted,



Allen C. Turner
Registration Number 33,041
Attorney for Applicant
TRASKBRITT, PC
P.O. Box 2550
Salt Lake City, Utah 84110
Telephone: (801) 532-1922

Date: May 22, 2002

Enclosures: Appendix A (copy of the February 15, 2002 communication)
Appendix B (copy of the Notice to Comply)
Sequence Listing, a copy of the Sequence Listing in computer readable format and appropriate Statement
Fee to revive unavoidably abandoned application (Check No. 17846 in the amount of \$55.00)

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APPENDIX A



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Pau et al.

Serial No.: 09/449,854

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CERTIFICATE OF MAILING

I hereby certify that this correspondence along with any attachments referred to or identified as being attached or enclosed is being deposited with the United States Postal Service as First Class Mail (under 37 C.F.R. § 1.8(a)) on the date of deposit shown below with sufficient postage and in an envelope addressed to the Commissioner for Patents, Washington, D.C. 20231.

2/15/2002
Date of Deposit

Betty Vowles
Signature of registered practitioner or other person having reasonable basis to expect mailing to occur on date of deposit shown pursuant to 37 C.F.R. § 1.8(a)(1)(ii)

Betty Vowles
Typed/printed name of person whose signature is contained above

RESPONSE TO NOTICE TO COMPLY

Commissioner for Patents
Washington, D.C. 20231

Sir:

The Communication mailed January 15, 2002 has been received and reviewed. The Communication requested a sequence listing for the application and included a Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures. Applicants respectfully traverse the requirements of the Communication and Notice.

Applicants have reviewed the application, the associated figures and the subsequent filings, and have found no sequences listed therein. Clarification is thus respectfully requested. Specifically, applicants request an identification, by page and line number, of any sequences in the application.

The application should now be in condition for substantive examination. If any questions exist, the Office is kindly requested to contact the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Allen C. Turner", with a stylized flourish at the end.

Allen C. Turner

Registration No. 33,041

Attorney for Applicants

TRASKBRITT, PC

P. O. Box 2550

Salt Lake City, Utah 84110-2550

Telephone: (801) 532-1922

Date: February 15, 2002

APPENDIX B



Application No.: 09/449,854

NOTICE TO COMPLY WITH REQUIREMENTS FOR PATENT APPLICATIONS CONTAINING NUCLEOTIDE SEQUENCE AND/OR AMINO ACID SEQUENCE DISCLOSURES

The nucleotide and/or amino acid sequence disclosure contained in this application does not comply with the requirements for such a disclosure as set forth in 37 C.F.R. 1.821 - 1.825 for the following reason(s):

- ☒ 1. This application clearly fails to comply with the requirements of 37 C.F.R. 1.821-1.825. Applicant's attention is directed to these regulations, published at 1114 OG 29, May 15, 1990 and at 55 FR 18230, May 1, 1990.
- ☒ 2. This application does not contain, as a separate part of the disclosure on paper copy, a "Sequence Listing" as required by 37 C.F.R. 1.821(c).
- ☒ 3. A copy of the "Sequence Listing" in computer readable form has not been submitted as required by 37 C.F.R. 1.821(e).
- ☐ 4. A copy of the "Sequence Listing" in computer readable form has been submitted. However, the content of the computer readable form does not comply with the requirements of 37 C.F.R. 1.822 and/or 1.823, as indicated on the attached copy of the marked -up "Raw Sequence Listing."
- ☐ 5. The computer readable form that has been filed with this application has been found to be damaged and/or unreadable as indicated on the attached CRF Diskette Problem Report. A Substitute computer readable form must be submitted as required by 37 C.F.R. 1.825(d).
- ☐ 6. The paper copy of the "Sequence Listing" is not the same as the computer readable form of the "Sequence Listing" as required by 37 C.F.R. 1.821(e).
- ☒ 7. Other: Newly added claim 37 is drawn to a method limited to a nucleotide sequence which is not represented by a sequence identifier; and, the specification is not in compliance with the sequence rules.

Applicant Must Provide:

- ☐ An initial or substitute computer readable form (CRF) copy of the "Sequence Listing".
- ☒ An initial or substitute paper copy of the "Sequence Listing", as well as an amendment directing its entry into the specification.
- ☒ A statement that the content of the paper and computer readable copies are the same and, where applicable, include no new matter, as required by 37 C.F.R. 1.821(e) or 1.821(f) or 1.821(g) or 1.825(b) or 1.825(d).

For questions regarding compliance to these requirements, please contact:

For Rules Interpretation, call (703) 308-4216

For CRF Submission Help, call (703) 308-4212

For PatentIn software help, call (703) 308-6856

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